

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Payment of Taxes by Credit or Debit Cards; Other (LAC 61:III.1532)

Under the authority of R.S. 47:1511, R.S. 47:1519 and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, issues an Emergency Rule to adopt LAC 61:III.1532, Payment of Taxes by Credit or Debit Cards; Other, to provide special provisions for payment of taxes by credit or debit cards. This Emergency Rule, effective December 12, 2007, shall remain in effect for a period of 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Department of Revenue has determined that this emergency action is necessary to identify matters and errors related to payments of taxes by credit or debit cards. Specifically, this Emergency Rule provides that when a credit or debit card is accepted as a method of payment of taxes, matters concerning the payment are subject to the applicable error resolution procedures of the Truth in Lending Act, the Electronic Fund Transfer Act, or similar provisions of state law, only for the purpose of resolving errors relating to the credit card or debit card account, but not for resolving any errors, disputes, or adjustments relating to the underlying tax liability. This Emergency Rule also provides the limited purposes and activities for which information relating to payment, or processing of payment, of taxes by credit and debit card may be used or disclosed by card issuers, financial institutions, and other persons involved in the transaction. A delay in adopting this Rule could have an adverse impact on taxpayers and other persons who are unaware of the special provisions and procedures that apply when a credit or debit card is used to make a tax payment.

Title 61

REVENUE AND TAXATION

Part III. Department of Revenue—Administrative Provisions and Miscellaneous

Chapter 15. Electronic Filing and Payments

§1532. Payment of Taxes by Credit or Debit Cards; Other

A. Authority to Receive Payment

1. Payments by Credit or Debit Card. All taxes due under any state law that the secretary is authorized to collect may be paid by credit card or debit card as authorized by this Section. Payment of taxes by credit or debit card is voluntary on the part of the taxpayer. Only credit cards or debit cards from a nationally recognized institution may be used for this purpose, and all such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the secretary. All references in this regulation to tax also include interest, penalties, fees, payments, additional amounts, and additions to tax.

2. Payments by Electronic Funds Transfer Other than Credit or Debit Card. Payment by electronic funds transfer other than payment by credit card or debit card is currently authorized by R.S. 47:1519. Specific provisions relating to payments by electronic funds transfer other than payment by credit or debit card are contained in R.S. 47:1519 and the

regulation promulgated pursuant to R.S. 47:1519, LAC 61:I.4910 (Electronic Funds Transfer). Thus, this regulation only provides for payments of taxes by credit and debit card. Louisiana Revised Statute 47:1519 and LAC 61:I.4910 shall remain the authorities for payment by electronic funds transfer other than payment by credit card and debit card.

B. Definitions

Credit Card—any credit card as defined in Section 103(k) of the Truth in Lending Act (15 U.S.C. 1602(k)), including any credit card, charge card, or other credit device issued for the purpose of obtaining money, property, labor, or services on credit.

Debit Card—any accepted card or other means of access as defined in Section 903(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(1)), including any debit card or similar device or means of access to an account issued for the purpose of initiating electronic fund transfers to obtain money, property, labor, or services.

Electronic Funds Transfer—any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically so as to order, instruct, or authorize a financial institution to debit or credit an account and is accomplished by an automated clearinghouse debit or automated clearinghouse credit. The term *financial institution* includes a state or national bank, a state or federal savings and loan association, and a state or federal credit union. A credit or debit card issued by a financial institution is used to initiate an electronic funds transfer.

Payment—any amount paid to the Department of Revenue representing a tax, fee, interest, penalty, or other amount.

Secretary—the Secretary of the Department of Revenue or the secretary's representative.

Underlying Tax Liability—the total amount of tax owed by a taxpayer and due to the secretary.

C. Payment Deemed Made. A payment of tax by credit or debit card shall be deemed made when the issuer of the credit or debit card properly authorizes the transaction, provided that the payment is actually received by the secretary in the ordinary course of business and is not returned because of an error relating to the credit or debit card account as described in Subsection E of this Section.

D. Payment Not Made. No taxpayer making any payment of tax by credit or debit card to the secretary is relieved from liability for the underlying tax obligation except to the extent that the secretary receives final payment of the underlying tax obligation in cash or the equivalent. If final payment is not made by the credit or debit card issuer or other guarantor of payment in the debit or credit card transaction, the underlying tax obligation shall survive, and the secretary shall retain all special and alternative remedies or procedures for enforcement which would have applied if the debit or credit card transaction had not occurred and may proceed to enforce the collection of any taxes due. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit or debit card or financial institution to the state of Louisiana. No person, by contract or otherwise, may modify the provisions of this Subsection.

E. Resolution of Errors Relating to the Credit Card or Debit Card Account

1. Applicable Procedures. In general, payments of taxes by credit or debit card shall be subject to the applicable

error resolution procedures of Section 161 of the Truth in Lending Act (15 U.S.C. 1666), Section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or any similar provisions of state law, for the purpose of resolving errors relating to the credit or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability. Thus, nontax matters related to payment by credit or debit cards are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the secretary.

2. Matters Covered by Error Resolution Procedures. The error resolution procedures of Paragraph E.1 of this Section apply to the following types of errors:

- a. an incorrect amount posted to the taxpayer's credit or debit card account as a result of a computational error, numerical transposition, or similar mistake;
- b. an amount posted to the wrong taxpayer's credit or debit card account;
- c. a transaction posted to the taxpayer's credit or debit card account without the taxpayer's authorization; and
- d. other similar types of nontax errors relating to the taxpayer's credit or debit card account that would be subject to resolution under Section 161 of the Truth in Lending Act (15 U.S.C. 1666), Section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or similar provisions of state law.

3. No Basis for Claim or Defense against Secretary or State. An error described in this Subsection may be resolved only through the applicable error resolution procedures of Section 161 of the Truth in Lending Act (15 U.S.C. 1666), Section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or similar provisions of state law, as set forth in Subsection F of this Section and shall not be a basis for any claim or defense in any administrative or court proceeding involving the secretary or the state of Louisiana.

F. Return of Funds Pursuant to Error Resolution Procedures. If a person is owed an amount because of the correction of an error under the error resolution procedures of Paragraph E.1 of this Section, the secretary may, in the secretary's sole discretion, return the amount to the person by arranging for a credit to that person's credit or debit card account with the issuer of the credit or debit card or any other financial institution or person that participated in the credit or debit card transaction in which the error occurred. Returns of funds through credit or debit card credits are only available to correct errors relating to the credit or debit card account, and not to refund overpayments of taxes.

G. Tax Matters not Subject to Error Resolution Procedures. The error resolution procedures of Paragraph E.1 of this Section do not apply to any error, question, dispute, or any other matter concerning the amount of tax owed by any person for any taxable period. The error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any taxable period for any reason. The error resolution procedures cannot be used to refund an overpayment of taxes. All tax matters that have been delegated to the secretary and the Department of Revenue shall be resolved by the secretary, without the involvement of financial intermediaries, through the administrative and judicial procedures established pursuant to Title 47 of the Louisiana Revised Statutes of 1950, as amended, and regulations promulgated pursuant to the Administrative Procedure Act. Thus, credit card and debit card issuers, financial institutions, other intermediaries and

processing mechanisms are excluded from the resolution of an error when the alleged error involves the underlying tax liability, as opposed to the credit or debit card account.

1. Rights of Credit Card Customers. Payments of taxes by credit or debit card are not subject to Section 170 of the Truth in Lending Act (15 U.S.C. 1666i) or to any similar provision of state law.

2. Creditor. The term *creditor* under Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) does not include the secretary with respect to credit or debit card transactions in payment of any tax that the secretary is authorized to administer, enforce or collect.

H. Service Fee for Using Debit or Credit Card. At the time of payment, the service fee for the use of a credit or debit card shall be charged to the taxpayer and shall be collectible as part of the taxpayer's liability. The charge, however, shall not exceed the fee charged by the debit or credit card issuer, including any discount rate.

I. Authority to Enter into Contracts. The secretary may enter into contracts for the purpose of implementing a system to provide a convenient electronic method for receiving payments of taxes by credit or debit card.

J. Use and Disclosure of Information Relating to Payment by Credit or Debit Card. Any information or data obtained directly or indirectly by any person other than the taxpayer in connection with payment of taxes by a credit or debit card is subject to the confidentiality restrictions of R.S. 47:1508, whether the information is received from the Department of Revenue or from any other person, including the taxpayer.

1. No person other than the taxpayer shall use or divulge the information except as follows.

a. Credit or debit card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with Subsection E of this Section. This authority includes the following:

- i. processing the credit or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the Department of Revenue;
- ii. billing the taxpayer for the amount charged or debited with respect to payment of the tax liability;
- iii. collecting the amount charged or debited with respect to payment of the tax liability;
- iv. returning funds to the taxpayer in accordance with Subsection F of this Section;
- v. sending receipts or confirmation of a transaction to the taxpayer, including secured electronic transmissions and facsimiles; and
- vi. providing information necessary to make a payment to the secretary, as explicitly authorized by the taxpayer (e.g., name, address, Social Security number, taxpayer identification number).

b. Notwithstanding the provisions of Paragraph J.1 of this Subsection, use or disclosure of information relating to credit and debit card transactions for purposes related to any of the following is not authorized:

- i. the sale, or transfer for consideration, of confidential information separate from a sale or transfer for consideration of the underlying account or receivable;

ii. marketing for any purpose, such as marketing tax-related products or services or marketing any product or service that targets persons who have used a credit or debit card to pay taxes; and

iii. furnishing the information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

2. Any person who uses or discloses the information contrary to the provisions of R.S. 47:1508 and other than as authorized by this Subsection shall be guilty of a misdemeanor and, upon conviction, can be fined up to \$10,000 or be imprisoned for up to two years, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519 and R.S. 47:1577.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 34:

Cynthia Bridges
Secretary

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